

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
HELENA, MONTANA

IN THE MATTER OF:)	CASE NO. 2002-35
)	
THE PROPOSED DISCIPLINARY)	NOTICE OF PROPOSED AGENCY
TREATMENT OF CANTON AGENCY,)	ACTION AND OPPORTUNITY FOR
LLC, BETH GARGUILO, MEDICAL)	HEARING (LICENSE DISCIPLINE
BENEFITS ADMINISTRATORS OF)	AND ADMINISTRATIVE FINE)
MARYLAND, INC, and CUSTOM)	
RAIL EMPLOYER WELFARE TRUST)	
FUND,)	
)	
Respondents.		

TO: Canton Agency, LLC
c/o CSC of Montana, Inc.
Box 1715
Helena, MT. 59624-1715

Beth Garguilo
c/o CSC of Montana, Inc.
Box 1715
Helena, MT. 59624-1715

Medical Benefits Administrators of Maryland, Inc.
3103 Emmorton Rd
Abingon, Maryland 21009

Custom Rail Employer Welfare Trust Fund
c/o Mendes & Mount
750 Seventh Ave
New York, N.Y. 10019-6829

PLEASE TAKE NOTICE

Staff of the Insurance Division of the office of the State Auditor and Commissioner of Insurance of the state of Montana (Commissioner), pursuant to the authority of the Insurance Code of Montana, Section 33-1-101, et seq., Montana Code Annotated (2001) (MCA), is proposing to the Commissioner that he take

1 disciplinary action against the entities named above for
2 violations of the Montana Code. The Commissioner has authority
3 to take such action under the provisions of Sections 33-1-317,
4 33-2-119, 33-17-411, 33-17-1001, 33-17-1002, and 33-35-302, MCA.

5 It is the intent of the legislature and the declared policy
6 of the state that occupational licensure be granted or revoked as
7 a police power of the state in its protection of the public
8 health, safety, and welfare pursuant to section 37-1-202, MCA.

9 Service of process is pursuant to section 33-1-314, MCA.

10 REASONS FOR ACTION

11 There is reason to believe that the following facts, if
12 true, justify and support such disciplinary treatment.

13 ALLEGATIONS

14 1. On July 2, 2002, Chief Investigator John Tarr received an
15 e-mail complaint from Jim Mouradick, Employee Benefits Manager,
16 Eaton & Eaton Insurance Brokers, in Fresno, California.
17 Mouradick alleged that Custom Rail Employer Welfare Trust Fund
18 (Crew) and its agents were selling health insurance in Montana as
19 a self-funded Multiple Employer Welfare Arrangement.

20 2. Jerry Scier investigated the matter. In investigating,
21 he determined that Beth Garguilo acted as the insurance producer
22 for Canton Agency, LLC. Garguilo had contacted and sold a Crew
23 health policy to the Central Montana Railroad, Inc (CMR). This
24 was confirmed with Carla Allen, the General Manager for CMR.
25 Neither person is licensed by the State Auditor's Office, nor is

1 the Canton Agency, LLC registered with the Montana Secretary of
2 State.

3 3. Stier further determined that Crew does not have a
4 certificate of authority from the Montana commissioner of
5 insurance.

6 4. The Small Railroad Business Owners Association of
7 America, Inc. (SRBOA) was incorporated in the District of
8 Columbia. Stier also determined that SRBOA had established Crew.

9 5. Stier talked with Garguilo and she stated that Crew had
10 the initial approval from the IRS as a 501-C-9 Voluntary Benefit
11 Society. Stier contacted Debbie Zuidemn of the IRS. Zuidemn
12 checked their list of exempt organizations and Crew was not
13 listed.

14 6. The Crew Summary Plan Description reads in part: "The
15 Custom Rail Employers Welfare Trust Fund is 'fully insured' under
16 a reinsurance arrangement with Underwriters at Lloyds London.
17 Under this arrangement ALL claims described within this Summary
18 Plan Description are fully guaranteed. The Employee however, is
19 not the insured and has no direct rights of recovery under this
20 contract of insurance."

21 7. The Crew Summary Plan also lists Medical Benefits
22 Administrators of Maryland, Inc (MBA) as the third party
23 administrator. Stier did not find that it was registered as a
24 third party administrator with the commissioner of insurance.

25 8. Stier wrote a letter to Ronald Wilson, president of MBA

1 and of Canton Agency LLC. Wilson sent back purported changes to
2 CREW that read: "The Custom Rail Employers Welfare Trust Fund is
3 'fully insured' as defined by ERISA under a stop-loss insurance
4 arrangement with Underwriters at Lloyd's, London. Under this
5 arrangement ALL eligible claims described within this Summary
6 Plan description are fully guaranteed. Although the Employee has
7 no direct rights of recovery under this policy, the Trust or the
8 Claims Administrator on behalf of the Trust shall assign its
9 rights under this policy to an Employee"

10 9. Wilson provided a "Certificate of Insurance" with the
11 Underwriters of Lloyd's, London. It has Crew as the insured.
12 The top of page 4 reads: "The Custom Rail Employer Welfare Trust
13 Fund Specific Excess Loss Insurance". Page 11 reads in part:
14 "Item 5 Retention by Assured (Crew): Per Person: US\$ 50,000".

15 10. Lloyds of London is not an authorized insurer in that
16 the commissioner of insurance has not issued a certificate of
17 authority to that entity.

18 CONCLUSIONS

19 1. The State Auditor is the Commissioner of Insurance
20 pursuant to section 2-15-1903, Mont. Code Ann.

21 2. The insurance department is under the control and
22 supervision of the Commissioner pursuant to section 33-1-301,
23 Mont. Code Ann.

24 3. A person may not transact a business of insurance in
25 Montana or a business relative to a subject resident, located, or

1 to be performed in Montana without complying with the applicable
2 provisions of this code pursuant to section 33-1-102, Mont. Code
3 Ann.

4 4. The Commissioner shall administer the Department of
5 Insurance to protect insurance consumers pursuant to section 33-
6 1-311, Mont. Code Ann.

7 5. Carguilo and Canton Agency are in violation of section
8 33-17-201, MCA in acting as an insurance producer, as defined at
9 33-17-102(9), MCA, in Montana without a producer's license.

10 6. Medical Benefits Administrators of Maryland, Inc does
11 not have a certificate of registration while acting as a third
12 party administrator in Montana in violation of section 33-17-603,
13 MCA.

14 7. Crew established a self-funded multiple employer welfare
15 arrangement in Montana without a certificate of authority from
16 the commissioner, in violation of 33-35-201(1), MCA.

17 8. A self-funded multiple employer welfare arrangement
18 means a multiple employer welfare arrangement that does not
19 provide for payment of benefits under the arrangement solely
20 through a policy or policies of insurance issued by one or more
21 insurance companies licensed under this title. 33-35-103(6),
22 MCA. Lloyds of London is not licensed under this title, but is
23 merely an unauthorized insurer pursuant to section 33-2-
24 301(1)(g), MCA.

25 9. Even if Lloyds of London was licensed under this title,

1 Crew does not provide for payment of benefits solely through a
2 policy or policies of insurance. Therefore, Crew meets the
3 definition of "Self-funded multiple employer welfare arrangement"
4 pursuant to section 33-35-201, MCA.

5 10. When Garguilo of Canton Agency sold a policy to Central
6 Montana Railroad of Lewistown, Montana, Crew then established
7 itself in Montana since Central Montana Railroad has its primary
8 place of business in Montana. Section 33-35-201, MCA.

9 11. By not having a certificate of authority issued by the
10 commissioner of insurance, Crew is in violation of 33-2-101, MCA
11 pursuant to section 33-35-303, MCA.

12 12. The Summary Plan Description, which is the de facto
13 insurance policy, does not contain the disclosure as required by
14 section 33-35-307, MCA.

15 13. In selling insurance without a certificate of
16 authority, Crew is committing insurance fraud in offering or
17 selling insurance, Crew misrepresented a material fact, known to
18 Crew to be untrue or made with reckless indifference as to
19 whether it is true, with the intention of causing another person
20 to rely upon the misrepresentation to that relying person's
21 detriment, pursuant to section 33-1-1302, MCA.

22 14. If insurance fraud is proven, then the commissioner may
23 order that Crew pay restitution to Central Montana Railroad, Inc
24 pursuant to 33-1-1302, MCA.

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1 Should you request a hearing, you have the right to be
2 accompanied, represented, and advised by counsel. If the counsel
3 you choose has not been admitted to practice law in the state of
4 Montana, he or she must comply with the requirements of
5 Application of American Smelting and Refining Co., (1973), 164
6 Mont. 139, 520 P.2d 103.

7 CONTACT WITH INSURANCE COMMISSIONER'S OFFICE

8 If you have questions or wish to discuss this matter, please
9 contact Kevin Phillips, legal counsel for the State Auditor, 840
10 Helena Ave, Helena, MT, 59604-4009, (406)444-3496 or, within
11 Montana, (800)332-6148. If you are represented by an attorney,
12 please make any contacts with this office through your attorney.

13 POSSIBILITY OF DEFAULT

14 Failure to give notice or to advise of your demand for a
15 hearing or form of informal procedure within twenty (20) days,
16 will result in the entry of a default order imposing the
17 disciplinary sanctions against you and your license, all without
18 any more notice to you, pursuant to 6.2.101, Administrative Rules
19 of Montana and the Attorney General's Model Rule 10, 1.3.214.

20 DATED this 31st day of October, 2002.

21 JOHN MORRISON
22 State Auditor and
23 Commissioner of Insurance

24 By: 

25 Kevin F. Phillips
 Insurance Attorney

1 CERTIFICATE OF SERVICE

2 I hereby certify that I mailed a true and correct copy of
3 the foregoing NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY
4 FOR HEARING (LICENSE DISCIPLINE AND ADMINISTRATIVE FINE) to the
5 following persons by depositing the same in the U.S. Mail,
6 certified, return receipt requested, on this 1 day of November
7 , 2002.

8 TO: Canton Agency, LLC
9 c/o CSC of Montana, Inc.
10 Box 1715
Helena, MT. 59624-1715

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11 c/o CSC of Montana, Inc.
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20 State Auditor's Office
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